

# American Samoa's Procedural Safeguards Notice for Children Receiving Special Education and Related Services

*American Samoa Department of Education*

*Special Education Division*

*Pago Pago, American Samoa 96799*

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# Special Education Laws Governing the Rights of Parents and Children with Disabilities

The American Samoa Department of Education (ASDOE) has educated children with disabilities in its public schools since 1971, but it was not until Public Law PL94-142 was passed in 1975 which required public schools in all states and territories to provide special education for all children with disabilities. In 2004, the reauthorization of the Individuals with Disabilities Educational Act (IDEA) marked improvements to the education rights of children with disabilities. These laws define special education as “specifically designed instruction, at no cost to the parents, to meet the unique needs of the child and may include instruction provided in the classroom, in the home, in the hospital and in residential facilities and other settings.”

Children with disabilities include those with autism, deaf-blindness, emotional disturbance, deaf or hard of hearing, intellectual disability, multiple disability, other health impairment, orthopedic impairment, developmental delays, specific learning disability, speech-language impairment, traumatic brain injury and visual impairment.

The IDEA requires that all eligible children with disabilities, age 3-21, be provided a Free and Appropriate Public Education (FAPE). FAPE is at no cost to the parents.

## Purpose of this Handbook

As the parent of a child who is suspected to need or is identified as needing special education and related service(s), you have certain rights, which are guaranteed by state and federal laws. Those laws require education agencies to fully inform parents of all available procedures relating to the identification, evaluation, placement, delivery of services, educational records, and complaint resolution.

The purpose of this handbook is to provide you with information about your rights, the rights of your child and the responsibilities of the ASDOE and the school toward meeting the special needs of your child. This means any school program conducted by a public agency and approved by the ASDOE.

This handbook must be given to you one time a school year **and** at the following times:

1. Upon initial referral or parent request for an evaluation;
2. Upon receipt of the first state complaint and upon receipt of the first due process complaint in a school year;
3. In accordance with the discipline procedures; and
4. Upon request by a parent

## Definitions

Several words that are used throughout this document have been defined according to the IDEA regulations.

- “Consent” means after being given the information necessary to make an informed decision about the proposed activity, you understand and agree in writing to the proposed activity. The information will be provided in your native language or other mode of communication.
- “Evaluation” means procedures used to determine whether a child has a disability and the nature and event of the special education and related services that the child needs.

- “Personally Identifiable” means the information includes the name of the child, the child’s parent or other family member, the child’s address, a personal identifier such as the child’s social security or student hospital number, or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.
- “Parent” means:
  - A natural or adoptive parent of a child;
  - A guardian, but not the state if the child is a ward of American Samoa;
  - A person acting in the place of a parent (such as grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child’s welfare)<sup>1</sup>;
  - A surrogate parent who has been appointed in accordance with the law (34 C.F.R. § 300.515); or
  - A foster parent acting as a parent if the natural parents’ authority to make educational decisions on the child’s behalf has been extinguished under American Samoa law, and the foster parent has an ongoing, long- term parental relationship with the child; is willing to make the educational decisions required of parents under IDEA; and has no interest that would conflict with the interests of the child.
- “Public Agency” includes ASDOE, schools, and any other political subdivision of American Samoa that is responsible for providing education to children with disabilities.

## Parental Rights Transferred to your Child

At least one year before your child turns age 18, ASDOE or the school shall inform both parent(s) and the child of the transfer of parental rights at the age of majority. When the child turns 18, all rights under special education law will transfer from the parent to the child (the adult student), unless a court has appointed a legal guardian for the child. Parent(s) retain the right to receive required notices; except for students incarcerated in correctional institutions, both their adult student and parent(s) will continue to receive all the required notices contained within these parental rights.

## Prior Written Notice

Your school must give you written notice (provide you certain information in writing), within a reasonable amount of time before it:

- Proposes to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child; or
- Refuses to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of FAPE to your child.

## Content of Notice

The written notice must:

- Describe the action that your school proposes or refuses to take;

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<sup>1</sup> If a person such as a stepparent, grandparent, or other relative with whom the child lives is acting in the absence of the parent and the parent resumes responsibility for the child, the wishes of the parent take precedence.

- Explain why your school is proposing or refusing to take the action;
- Describe each evaluation procedure, assessment, record, or report your school used in deciding to propose or refuse the action;
- Include a statement that you have protections under the procedural safeguards provisions in Part B of IDEA;
- Tell you how you can obtain a description of the procedural safeguards if the action that your school is proposing or refusing is not an initial referral for evaluation;
- Include resources for you to contact for help in understanding Part B of IDEA;
- Describe any other options that your child's Individualized Education Program (IEP) Team considered and the reasons why those options were rejected; **and**
- Provide a description of other reasons why your school proposed or refused the action.

## Notice in Understandable Language

The notice must be:

- Written in language understandable to the general public; **and**
- Provided in your native language or other mode of communication you use, unless it is clearly not feasible to do so.

If your native language or other mode of communication is not a written language, your school must ensure that:

- The notice is translated for you orally or by other means in your native language or other mode of communication;
- You understand the content of the notice; **and**
- There is written evidence that the requirements above have been met.

## Native Language

*Native language*, when used regarding an individual who has limited English proficiency, means the following:

- The language normally used by that person, or, in the case of a child, the language normally used by the child's parents;
- In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.

For a person with deafness or blindness, or for a person with no written language, the mode of communication is what the person normally uses (such as sign language, Braille, or oral communication).

## Electronic Mail

If your school offers parents the choice of receiving documents by e-mail, you may choose to receive the following by e-mail:



- Prior written notice;
- Procedural safeguards notice; **and**
- Notices related to a due process complaint.

## Student Referral

The IDEA requires educational agencies to locate, identify, and evaluate all children with disabilities who may need special education and related services, including children who are enrolled in private or elementary and secondary schools, or are being home schooled.

A referral is a request by a public or private school or other agencies for possible evaluation of a child who is suspected of having a disability and might need special education services. A parent may make a referral using the ASDOE student referral form or through a verbal request. The referral should include the child's specific concern, current strengths, weaknesses, and interventions provided. If the child is enrolled in a public school, the referral should be given to the child's teacher, administrator(s), or the Special Education Office at Fagaalu, American Samoa. If the child is not enrolled in a public school, the referral should be given to the Special Education Office at Fagaalu, American Samoa. For preschool children with suspected disabilities, the referral is given to Early Childhood Education (ECE).

## Parental Consent

*Consent* means:

- You have been fully informed in your native language or other mode of communication (such as sign language, Braille, or oral communication) of all information about the action for which you are giving consent.
- You understand and agree in writing to that action, and the consent describes that action and lists the records (if any) that will be released and to whom; **and**
- You understand that the consent is voluntary on your part and that you may withdraw your consent at any time.

If you wish to revoke (cancel) your consent after your child has begun receiving special education and related services, you must do so in writing. Your withdrawal of consent does not negate (undo) an action that has occurred after you gave your consent but before you withdrew it. In addition, the school is not required to amend (change) your child's education records to remove any references that your child received special education and related services after your withdrawal of consent.

## Consent for Initial Evaluation

Your school cannot conduct an initial evaluation of your child to determine whether your child is eligible under Part B of IDEA to receive special education and related services without first providing you with prior written notice of the proposed action and obtaining your consent as described under the headings ***Prior Written Notice*** and ***Parental Consent***.

Your school must make reasonable efforts to obtain your informed consent for an initial evaluation to decide whether your child is a child with a disability.

Your consent for initial evaluation does not mean that you have also given your consent for the school to start providing special education and related services to your child.

Your school may not use your refusal to consent to one service or activity related to the initial evaluation as a basis for denying you or your child any other service, benefit, or activity, unless another Part B requirement requires the school to do so.

If your child is enrolled in public school or you are seeking to enroll your child in a public school and you have refused to provide consent or failed to respond to a request to provide consent for an initial evaluation, your school may, but is not required to, seek to conduct an initial evaluation of your child by using the IDEA's mediation or due process complaint procedures. Your school will not violate its obligations to locate, identify, and evaluate your child if it does not pursue an evaluation of your child in these circumstances.

### Special Rules for Initial Evaluation of Wards of American Samoa

Students who are wards of American Samoa have legally assigned surrogate parent(s). Case management (selection, remuneration, and supervision) is delegated by the Court to the Office of the Attorney General and to Family Services of the Department of Human and Social Services. A surrogate parent selected as permitted by law:

1. Has no personal or professional interest that conflicts with the interest of the student the surrogate parent(s) represents;
2. Has knowledge and skills that ensure adequate representation of the student, including a functional understanding of the educational rights of students with disabilities; and
3. Cannot be an employee of a public agency, which is involved in the education or care of the student. (A person who otherwise qualifies to be a surrogate parent is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.)

When a student is determined to need special education and related services, the parents or guardian or family member(s) acting as parents will be informed that the ASDOE wishes to conduct an individual evaluation of the student. If consent is not forthcoming for initial evaluation, and there is reason to suspect that this is due to the unavailability of the parents or guardian or family member acting as a parent, ASDOE will make a written inquiry to the adult in charge of the student's place of residence, as well as to the parents or guardian or family member at their last known address. If because of these efforts it is determined that the student is without a parent or guardian or family member acting as a parent, then the Assistant Director of Special Education will report this to the Department of Human and Social Services (DHSS). It is through the court system together with DHSS that a surrogate parent will be appointed.

A surrogate parent will represent the student in all manners, meetings, and procedures relating to the identification, assessment, educational placement, and the provision of a free appropriate public education.

There is one exception that you should know about. *Ward of American Samoa* does not include a foster child who has a foster parent who meets the definition of a *parent* as used in IDEA.

### Parental Consent for Services

Your school must obtain your informed consent before providing special education and related services to your child for the first time.

The school must make reasonable efforts to obtain your informed consent before providing special education and related services to your child for the first time.

If you do not respond to a request to provide your consent for your child to receive special education and related services for the first time, or if you refuse to give such consent or later revoke (cancel) your consent in writing, your school may not use the procedural safeguards (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) in order to obtain agreement or a ruling that the special education and related services (recommended by your child's IEP Team) may be provided to your child without your consent.

If you refuse to give your consent for your child to receive special education and related services for the first time, or if you do not respond to a request to provide such consent or later revoke (cancel) your consent in writing and the school does not provide your child with the special education and related services for which it sought your consent, your school:

1. Is not in violation of the requirement to make a free appropriate public education (FAPE) available to your child for its failure to provide those services to your child; **and**
2. Is not required to have an individualized education program (IEP) meeting or develop an IEP for your child for the special education and related services for which your consent was requested.

If you revoke (cancel) your consent in writing at any point after your child is first provided special education and related services, then the school may not continue to provide such services, but must provide you with prior written notice, as described under the heading **Prior Written Notice**, before discontinuing those services.

## Parental Consent for Reevaluations

Your school must obtain your informed consent before it reevaluates your child, unless your school can demonstrate that:

1. It took reasonable steps to obtain your consent for your child's reevaluation; **and**
2. You did not respond.

If you refuse to consent to your child's reevaluation, the school may, but is not required to, pursue your child's reevaluation by using the mediation or due process complaint procedures to seek to override your refusal to consent to your child's reevaluation. As with initial evaluations, your school does not violate its obligations under Part B of IDEA if it declines to pursue the reevaluation in this manner.

## Documentation of Reasonable Efforts to Obtain Parental Consent

Your school must maintain documentation of reasonable efforts to obtain your consent for initial evaluations, to provide special education and related services for the first time, for a reevaluation, and to locate parents of wards of American Samoa for initial evaluations. The documentation must include a record of the school's attempts in these areas, such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;

2. Copies of correspondence sent to you and any responses received; **and**
3. Detailed records of visits made to your home or place of employment and the results of those visits.

## Other Consent Requirements

Your consent is not required before your school may:

- Review existing data as part of your child's evaluation or a reevaluation; **or**
- Give your child a test or other evaluation that is given to all children unless, before that test or evaluation, consent is required from parents of all children.

If you have enrolled your child in a private school at your own expense or if you are home schooling your child, and you do not provide your consent for your child's initial evaluation or your child's reevaluation, or you fail to respond to a request to provide your consent, the school may not use its dispute resolution procedures (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) and is not required to consider your child as eligible to receive equitable services (services made available to some parentally-placed private school children with disabilities).

## Evaluation Procedures

After a child has been referred, and consent has been signed for evaluation. Evaluations must be made within (60) business days from the date of signed consent for evaluation. Individual Education Program eligibility and placements must be made within (90) business days from the date of signed consent. The following specific procedures protect the rights of students and their parents:

1. Parents are involved in the referral process for initial testing;
2. Parents are given prior written notice of their rights in the language they best understand. Parents must give written permission before the first initial evaluations can begin;
3. Testing and evaluation materials are selected and administered in a way that is not racially or culturally biased; and
4. More than one test or procedure must be used to determine whether a child has a disability and to develop an appropriate educational program for the child.

## Eligibility Determination

After the evaluation process is completed, a decision must be made to determine if your child needs special education and/or related services. This decision must be made by the IEP Team, including the parent(s), who is knowledgeable about his/her child. This the IEP Team evaluates the meaning of the evaluation data, and the placement options (choices). The school must provide a copy of the evaluation report and the documentation of eligibility determination to you.

For your child to be deemed as eligible, all of the following criteria must be met:

- A student must have a disability according to one of the eligibility categories;
- The disability must adversely affect the student's educational performance; and
- The student must need special education.

## Independent Educational Evaluations

An independent educational evaluation is an evaluation by a qualified person who is not employed by your school responsible for the education of your child. If you do not agree with the evaluation or reevaluation completed by your school, you are entitled to ask for an independent educational evaluation. This means you may decide that the evaluation by the school was not performed correctly or was incomplete, and that you would like an evaluation that is done by others.

You may request as many (or as few) assessments as you wish when you request your independent educational evaluation. For example, you may decide that one or more assessments that your school completed, such as the learning assessment or psychological assessment of your child, were incorrect, and that you would like others to conduct new assessment(s). Or you may believe that the school's evaluation should have included an assessment(s) that the school did not do, such as a medical or behavioral assessment of your child. You are entitled to only one independent educational evaluation of your child at public expense each time your school conducts an evaluation of your child with which you disagree.

### Right to an Independent Educational Evaluation at Public Expense

An independent evaluation is provided at no cost to you. It is at public expense which means that the school or ASDOE pays for the full cost of the evaluation. Independent evaluations must meet the same requirements as evaluations conducted by the school. If you request an independent educational evaluation, the school must provide you with information about where you may obtain an independent educational evaluation and about the school's criteria that apply to independent educational evaluations.

If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school uses when it initiates an evaluation (to the extent those criteria are consistent with your right to an independent educational evaluation). Except these criteria, a school may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

You have the right to be given, upon request for an independent educational evaluation, information about where an independent evaluation may be obtained and ASDOE's criteria for that evaluation.

You must be told about the requirements for selecting a qualified examiner. The requirements for an independent educational evaluation must be the same as those used by the school. The Assessment Coordinator can provide the requirements for selecting a qualified examiner.

However, the request is subject to the following conditions:

1. If you request an independent educational evaluation of your child at public expense, your school must, without unnecessary delay, either: (a) File a due process complaint to request a hearing to show that its evaluation of your child is appropriate; or (b) Provide an independent educational evaluation at public expense, unless the school demonstrates in a hearing that the evaluation of your child that you obtained did not meet the ASDOE's criteria.

2. If your school requests a hearing and the final decision is that your school's evaluation of your child is appropriate, you still have the right to an independent educational evaluation, but not at public expense.
3. If you request an independent educational evaluation of your child, the school may ask why you object to the evaluation of your child obtained by your school. However, your school may not require an explanation and may not unreasonably delay either providing the independent educational evaluation of your child at public expense or filing a due process complaint to request a due process hearing to defend the school's evaluation of your child.

## Parent-Initiated Evaluations

If you pay for an evaluation for your child, you should not expect the school to pay for it unless you have received written approval for payment from the Assistant Director of Special Education. When you obtain an independent educational evaluation of your child at public expense, or you share with the school an evaluation of your child that you obtained at private expense:

1. Your school must consider the results of the evaluation of your child, if it meets the ASDOE's criteria for independent educational evaluations, in any decision made with respect to the provision of a free appropriate public education (FAPE) to your child; **and**
2. You or your school may present the evaluation as evidence at a due process hearing regarding your child.

## Requests for Evaluations by Hearing Officers

If a hearing officer requests an independent educational evaluation of your child as part of a due process hearing, the cost of the evaluation must be at public expense.

## Individualized Educational Program (IEP)

If a decision is made that a child with a disability needs special education and/or related services, an IEP must be developed within ninety (90) business days from the date of signed parent consent to evaluate. An IEP is a written plan for the special education and/or related services that will be provided to a particular child. An IEP must be developed before special education and/or related services are provided to a child, and the services must start as soon as possible following the meeting(s) in which it was developed. The school is required to hold meetings at least once a year or more often, if necessary, to review each child's IEP and to revise the IEP when needed. The school must also provide prior written notice, within a reasonable amount of time before it: (1) Proposes to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child; **or** (2) Refuses to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of FAPE to your child.

An IEP must include:

1. A statement of the child's present levels of academic achievement and functional performance, including -
  - a. How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
  - b. For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

2. A statement of measurable annual goals, including academic and functional goals designed to -
  - a. Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
  - b. Meet each of the child's other educational needs that result from the child's disability;
3. For children with disabilities who take alternate assessments aligned to alternate academic achievement standards, a description of benchmarks or short-term objectives;
4. A description of how the child's progress toward meeting the annual goals will be measured;
5. A description of when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
6. A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child:
  - a. To advance appropriately toward attaining the annual goals;
  - b. To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and
  - c. To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;
7. An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;
8. A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and
9. If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why -
  - a. The child cannot participate in the regular assessment; and
  - b. The particular alternate assessment selected is appropriate for the child; and
10. The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.

The IEP Team must provide extended school year services if the child needs the services as a provision of FAPE.

Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include:

1. Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

2. The transition services (including courses of study) needed to assist the child in reaching those goals.

## IEP Team Meeting

The IEP Team meeting is key to making sure your child's IEP is working for them and their specific needs. It gives you a chance to discuss with teachers your child's weaknesses and strengths.

The IEP meeting is when you, teachers, and the school give and get input on how your child is doing. You'll discuss what's working, what needs to change, and your child's progress. Your child's feelings and motivations should be included in the conversation, whether he or she attends the IEP meeting.

The school must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child. If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the school must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

A placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement.

The law requires the IEP Team to review the IEP at least once a year. But the IEP Team can meet any time you or the school want a meeting. The IEP Team can meet more than once a year if needed or requested.

## Participation in the IEP Meeting

The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to: (1) The identification, evaluation, and educational placement of the child; and (2) The provision of FAPE to the child. Each school must provide notice consistent with 34 C.F.R. §300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings. A meeting does not include:

1. informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision; or
2. preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

The school system shall ensure that the IEP Team for each child with a disability includes:

1. One or both parents;
2. At least one regular education teacher of the child, (if the child is, or may be participating in the regular education environment);
3. At least one special education teacher of the child, and if appropriate, at least one related services provider of the child;
4. A school administrator and resource specialist, who are qualified to provide or supervise special education and is knowledgeable about the general education curriculum and the availability of resources (this person may be another member of the IEP Team providing all the qualifications are met);



5. The child may attend the meeting as deemed appropriate;
6. A representative of any other agency that is likely to be responsible for providing or paying for transition services;
7. An individual who can interpret the evaluation results, who may be a member of the team described above;
8. At the discretion of the parent or the school system, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate.
9. The assessment officer who performed the evaluation, if your child is being considered for special education for the first time or after reevaluation.

The school notifies the parent(s) of the IEP meeting at least one week prior to the date, time and place of the IEP meeting to ensure that parent(s) will have an opportunity to attend. In addition, parent(s) are asked if there is a need for accommodations during the meeting.

The notice must also state who will be attending. If the purpose of the meeting is consideration of transition services and your child is 16 (or younger if appropriate), the notice must indicate this purpose and your child will be invited to participate.

If you do not come to a scheduled IEP meeting, the meeting may be held, as long as the school has a record of its efforts to involve you. If you have agreed to attend the meeting and then cancel on the day of the meeting, the school may conduct the meeting without you.

The school ensures that the parents understand the discussion in the IEP meeting. For example, if the parents do not understand English, an interpreter will be provided by the school system.

The school gives the parent(s) a copy of the IEP. It is reasonable to receive a copy before the parent(s) leave the meeting or for a copy to be sent to the parent(s) within 10 days after the meeting.

## Confidentiality of Information

### Definitions

As used under the heading Confidentiality of Information:

- *Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
- *Education records* means the type of records covered under the definition of “education records” in 34 C.F.R. Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).
- *Participating agency* means any school, agency, or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of IDEA.
- *Personally identifiable* means information that includes:
  - (a) Your child's name, your name as the parent, or the name of another family member;
  - (b) Your child's address;
  - (c) A personal identifier, such as your child's social security number or student number; or
  - (d) A list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

## Notice to Parents

The ASDOE must give notice that is adequate to fully inform parents about confidentiality of personally identifiable information, including:

1. A notice provided in the native languages (English and Samoan) of the various population groups served in American Samoa;
2. A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods ASDOE intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
3. A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; **and**
4. A description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations in 34 C.F.R. Part 99.

Before any major activity to identify, locate, or evaluate children in need of special education and related services (also known as “child find”), the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout American Samoa of these activities (see Appendix A).

## Access Rights

Schools must maintain the confidentiality of information in your child’s educational record. However, the public school maintaining your child’s educational records must assume you have authority to inspect/review your child’s records unless advised that you do not have the authority under applicable American Samoa laws governing such matters as guardianship, separation, and divorce.

### **You have the right to:**

- Ask to see a list of all the types of records kept regarding your child and where the records are stored.
- Look at any of your child’s educational records which are kept or used by the school:
  - Without unnecessary delay;
  - Before any IEP meeting or due process hearing; and
  - Within 45 calendar days after asking to see the records.
- Ask for an explanation and interpretation of the records.
- Obtain copies of the records – A school may charge a reasonable fee for copying if that fee does not prevent you from reviewing the records. The school may not charge a fee to search for or retrieve the records.
- You may have your representative inspect and review the records.
- Be notified before information in your child’s records is destroyed.
- Give consent or refuse to give consent to share your child’s records with anyone who does not have an educational or legal purpose in seeing them.

The school must keep a record of those obtaining access to your child's record, including names, dates and purposes for the access. If you ask, you have a right to be told who has been given information from your child's records, the date it was given and how it was used.

## Record of Access

Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of IDEA (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

## Records on More Than One Child

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

## List of Types and Locations of Information

On request, each participating agency must provide you with a list of the types and locations of education records collected, maintained, or used by the agency.

## Fees

Each participating agency may charge a fee for copies of records that are made for you under Part B of IDEA, if the fee does not effectively prevent you from exercising your right to inspect and review those records.

A participating agency may not charge a fee to search for or to retrieve information under Part B of IDEA.

## Amendment of Records at Parent's Request

If you believe that information in the education records regarding your child collected, maintained, or used under Part B of IDEA is inaccurate, misleading, or violates the privacy or other rights of your child, you may request the participating agency that maintains the information to change the information.

The participating agency must decide whether to change the information in accordance with your request within a reasonable period of time of receipt of your request.

If the participating agency refuses to change the information in accordance with your request, it must inform you of the refusal and advise you of your right to a hearing as described under the next heading, ***Opportunity for a Hearing***.

## Opportunity for a Hearing

The participating agency must, on request, provide you an opportunity for a hearing to challenge information in education records regarding your child to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child.

A hearing to challenge information in education records must be conducted according to the procedures for such hearings under the Family Educational Rights and Privacy Act (FERPA).

If, as a result of the hearing, the participating agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of your child, it must change the information accordingly and inform you in writing.

If, as a result of the hearing, the participating agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must inform you of your right to place in the records that it maintains on your child a statement commenting on the information or providing any reasons you disagree with the decision of the participating agency.

Such an explanation placed in the records of your child must:

1. Be maintained by the participating agency as part of the records of your child as long as the record or contested portion is maintained by the participating agency; **and**
2. If the participating agency discloses the records of your child or the challenged information to any party, the explanation must also be disclosed to that party.

## Consent for Disclosure of Personally Identifiable Information

Unless the information is contained in education records, and the disclosure is authorized without parental consent under the Family Educational Rights and Privacy Act (FERPA), your consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies. Except under the circumstances specified below, your consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of Part B of IDEA.

Your consent, or consent of an eligible child who has reached the age of majority under American Samoa law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

If your child is in, or is going to go to, a private school your consent must be obtained before any personally identifiable information about your child is released between officials in the school where the private school is located and officials in the school where you reside.

## Safeguards

Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.

All persons collecting or using personally identifiable information must receive training or instruction regarding ASDOE's policies and procedures regarding confidentiality under Part B of IDEA and the Family Educational Rights and Privacy Act (FERPA).

Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

## Destruction of Information

Your school must inform you when personally identifiable information collected, maintained, or used under Part B of IDEA is no longer needed to provide educational services to your child.

The information must be destroyed at your request. However, a permanent record of your child's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

## Resolving Disagreements

What happens if I disagree with the school over the identification, evaluation, classification, educational placement, or the provision of a free, appropriate public education? There may be a time when you and the school disagree. Many disagreements can be resolved by communication with your child's teacher or school administration. There are also procedures to address your concerns, such as mediation, written complaints, and due process hearing.

### Mediation

Mediation is a way to discuss and resolve disagreements between you and the school with the help of a trained, impartial third person known as a mediator. Mediation occurs at a meeting held by a mediator at a time and place reasonably convenient to the participants and at no cost to the participants.

Mediators are not employed by ASDOE and are selected on a rotating basis.

Mediation may be requested at any time by the school or the parent involving any matter under the IDEA, including matters arising prior to the filing of a due process complaint. Information regarding the due process complaint process can be found below under the heading ***Due Process Complaint Procedures***.

The mediation process is voluntary on the part of the parties. It must not be used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under the IDEA. It must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

The mediator:

1. May not be an employee of the State Educational Agency or the school district that is involved in the education or care of your child; **and**
2. Must not have a personal or professional interest which conflicts with the mediator's objectivity.

A person who otherwise qualifies as a mediator is not an employee of a school district or State agency solely because he or she is paid by the agency or school district to serve as a mediator.

If you and the school reach an agreement, it will be written by the mediator and signed by both you and the school. If discussions during mediation do not result in a written agreement, then only the date and the names of persons at the mediation will be recorded. Mediation discussions are confidential and may not be used as evidence in a hearing. A written, signed mediation agreement under this paragraph is enforceable in any American Samoan court of competent jurisdiction or in a district court of the United States.

### *Requesting Mediation*

You may request a mediation by submitting the mediation request form, see the ASDOE website at <https://www.doe.as/District/Department/7-Special-Education/3168-Untitled.html>, or contacting ASDOE.

## Differences Between the Procedures for Due Process Complaints and State

## Complaints

The regulations for Part B of IDEA set forth separate procedures for state complaints and for due process complaints and hearings. As explained below, any individual or organization may file a state complaint alleging a violation of any Part B requirement by a school, the ASDOE, or any other public agency. Only you or a school may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation, or educational placement of a child with a disability, or the provision of a free appropriate public education (FAPE) to the child. Staff of the ASDOE generally must resolve a state complaint within a 60 calendar day timeline, unless the timeline is properly extended. However, for a due process complaint, an impartial hearing officer must hear the complaint (if not resolved through a resolution meeting or through mediation) and issue a written decision within 45 calendar days after the end of the resolution period, as described in this document under the heading Resolution Process, unless the hearing officer grants a specific extension of the timeline at your request or the school's request. The state complaint and due process complaint, resolution, and hearing procedures are described more fully below. The ASDOE has developed optional model forms to help file a state complaint or due process complaint, as described under the headings **Model Forms**.

If a written state complaint is received that is also the subject of a due process hearing as described under the heading **Filing a Due Process Complaint**, or the state complaint contains multiple issues of which one or more are part of such a hearing, the American Samoa must set aside any part of the state complaint that is being addressed in the due process hearing until the hearing is over. Any issue in the state complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described above.

If an issue raised in a state complaint has previously been decided in a due process hearing involving the same parties (for example, you and the school), then the due process hearing decision is binding on that issue and the ASDOE must inform the complainant that the decision is binding.

A complaint alleging a school's or other public agency's failure to implement a due process hearing decision must be resolved by the ASDOE.

## State Complaint Procedures

ASDOE has procedures for: (1) Resolving any complaint, including a complaint filed by an organization or individual from another state; (2) The filing of a complaint with the ASDOE; and (3) Widely disseminating the state complaint procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

### *Filing a State Complaint*

An organization or individual may file a signed written state complaint under the procedures described above.

The state complaint must include:

1. A statement that a school or other public agency has violated a requirement of Part B of IDEA or its implementing regulations in 34 C.F.R. Part 300;
2. The facts on which the statement is based;

3. The signature and contact information for the party filing the complaint; and
4. If alleging violations regarding a specific child:
  - (a) The name of the child and address of the residence of the child;
  - (b) The name of the school the child is attending;
  - (c) In the case of a homeless child or youth, available contact information for the child, and the name of the school the child is attending;
  - (d) A description of the nature of the problem of the child, including facts relating to the problem; **and**
  - (e) A proposed resolution of the problem to the extent known and available to the party filing the complaint at the time the complaint is filed. The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received.

The party filing the state complaint must forward a copy of the complaint to the school or other public agency serving the child at the same time the party files the complaint with the ASDOE.

### *Model Forms*

The ASDOE has developed a model form to help you and other parties to file a state complaint. See the ASDOE website at <https://www.doe.as/District/Department/7-Special-Education/3168-Untitled.html>. However, the model form is not required to submit a state complaint. In fact, you can use the model form or another appropriate form, so long as it contains the required information for filing a state complaint.

### *Mediation and State Complaints*

Mediation is available at any time by the school or the parent involving any matter under the IDEA, including matters that are the subject of a state complaint. Under 34 C.F.R. § 300.152(b)(1)(ii), the 60 calendar day period limit for the complaint resolution may be extended if there is an agreement between the parent and the school to extend the time limit while engaging in mediation. The extension must be requested in writing and will only be granted for the period of time the parties have agreed to participate in mediation.

If the mediation does not result in a signed written agreement, the ADOE will resolve your complaint within 60 calendar days after the complaint was filed, as required in 34 C.F.R. § 300.152(a).

### *Time Limit*

ASDOE has 60 calendar days after a complaint is filed to:

1. Carry out an independent on-site investigation, if the ASDOE determines that an investigation is necessary;
2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
3. Provide the school or other public agency with the opportunity to respond to the complaint, including, at a minimum: (a) at the option of the agency, a proposal to resolve the complaint; **and** (b) an opportunity for a parent who has filed a complaint and the agency to agree

voluntarily to engage in mediation;

4. Review all relevant information and make an independent determination as to whether the school or other public agency is violating a requirement of Part B of IDEA; **and**
5. Issue a written decision to the complainant that addresses each allegation in the complaint and contains: (a) findings of fact and conclusions; **and** (b) the reasons for the ASDOE's final decision.

### *Time Extensions for Issuing Final Decisions and Implementation*

The ASDOE procedures described above also must permit an extension of the 60 calendar day time limit only if:

1. Exceptional circumstances exist with respect to a particular state complaint; **or**
2. You and the school or other public agency involved voluntarily agree to extend the time to resolve the matter through mediation or alternative means of dispute resolution, if available in American Samoa.

Effective implementation of the ASDOE's final decision, if needed, includes: (a) technical assistance activities; (b) negotiations; **and** (c) corrective actions to achieve compliance.

### *Remedies for Denial of Appropriate Services*

In resolving a state complaint in which the ASDOE has found a failure to provide appropriate services, the ASDOE will address:

1. The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); **and**
2. Appropriate future provision of services for all children with disabilities.

## **Due Process Compliant Procedures**

### *Filing a Due Process Complaint*

You or the school may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation, or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child. The due process complaint must allege a violation that happened not more than two years before you or the school knew or should have known about the alleged action that forms the basis of the due process complaint.

The above timeline does not apply to you if you could not file a due process complaint within the timeline because:

1. The school specifically misrepresented that it had resolved the issues identified in the complaint; **or**
2. The school withheld information from you that it was required to provide you under Part B of IDEA.

### *Information for Parents*

The school must inform you of any free or low-cost legal and other relevant services available in the area if you request the information, **or** if you or the school file a due process complaint.



### *Due Process Complaint*

In order to request a hearing, you or the school (or your attorney or the school's attorney) must submit a due process complaint to the other party. That complaint must contain all of the content listed below and must be kept confidential.

Whoever files the complaint must also provide the ASDOE with a copy of the complaint.

### *Content of the Complaint*

The due process complaint must include:

1. The name of the child;
2. The address of the child's residence;
3. The name of the child's school;
4. If the child is a homeless child or youth, the child's contact information and the name of the child's school;
5. A description of the nature of the problem of the child relating to the proposed or refused action, including facts relating to the problem; **and**
6. A proposed resolution of the problem to the extent known and available to the complaining party (you or the school) at the time.

### *Notice Required Before a Hearing on a Due Process Complaint*

You or the school may not have a due process hearing until you or the school (or your attorney or the school's attorney) files a due process complaint that includes the information listed above.

### *Sufficiency of Complaint*

In order for a due process complaint to go forward, it must be considered sufficient. The due process complaint will be considered sufficient (to have met the content requirements above) unless the party receiving the due process complaint (you or the school) notifies the hearing officer and the other party in writing, within 15 calendar days of receiving the complaint, that the receiving party believes that the due process complaint does not meet the requirements listed above.

Within five calendar days of receiving the notification that the receiving party (you or the school) considers a due process complaint insufficient, the hearing officer must decide if the due process complaint meets the requirements listed above, and notify you and the school in writing immediately.

### *Complaint Amendment*

You or the school may make changes to the complaint only if:

1. The other party approves of the changes in writing and is given the chance to resolve the due process complaint through a resolution meeting, described under the heading ***Resolution Process***; **or**
2. By no later than five days before the due process hearing begins, the hearing officer grants permission for the changes.

If the complaining party (you or the school) makes changes to the due process complaint, the

timelines for the resolution meeting (within 15 calendar days of receiving the complaint) and the time period for resolution (within 30 calendar days of receiving the complaint) start again on the date the amended complaint is filed.

### *The School's Response to a Due Process Complaint*

If the school has not sent a prior written notice to you, as described under the heading **Prior Written Notice**, regarding the subject matter contained in your due process complaint, the school must, within 10 calendar days of receiving the due process complaint, send to you a response that includes:

1. An explanation of why the school proposed or refused to take the action raised in the due process complaint;
2. A description of other options that your child's individualized education program (IEP) Team considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the school used as the basis for the proposed or refused action; **and**
4. A description of the other factors that are relevant to the school's proposed or refused action.

Providing the information in items 1-4 above does not prevent the school from asserting that your due process complaint was insufficient.

### *Other Party Response to a Due Process Complaint*

Except as stated under the sub-heading immediately above, **School's Response to a Due Process Complaint**, the party receiving a due process complaint must, within 10 calendar days of receiving the complaint, send the other party a response that specifically addresses the issues in the complaint.

### *Model Forms*

The ASDOE has developed a model form to help you and other parties to file a due process complaint, see the ASDOE website at <https://www.doe.as/District/Department/7-Special-Education/3168-Untitled.html>. However, the model form is not required to submit a due process complaint. In fact, you can use the model form or another appropriate form, so long as it contains the required information for filing a due process complaint.

### *Mediation and Due Process*

Mediation is available to allow you and the school to resolve disagreements involving any matter under Part B of IDEA, including matters arising prior to the filing of a due process complaint. Thus, mediation is available to resolve disputes under Part B of IDEA, whether or not you have filed a due process complaint to request a due process hearing as described above.

### *Resolution Process*

Within 15 calendar days of receiving notice of your due process complaint, and before the due process hearing begins, the school must convene a meeting with you and the relevant member or members of the individualized education program (IEP) Team who have specific knowledge of the facts identified in your due process complaint. The meeting:

1. Must include a representative of the school who has decision-making authority on behalf of the school; **and**
2. May not include an attorney of the school unless you are accompanied by an attorney.

You and the school determine the relevant members of the IEP Team to attend the meeting.

The purpose of the meeting is for you to discuss your due process complaint, and the facts that form the basis of the complaint, so that the school has the opportunity to resolve the dispute.

The resolution meeting is not necessary if:

1. You and the school agree in writing to waive the meeting; **or**
2. You and the school agree to use the mediation process.

### ***Resolution Period***

If the school has not resolved the due process complaint to your satisfaction within 30 calendar days of the receipt of the due process complaint (during the time period for the resolution process), the due process hearing may occur.

The 45 calendar day timeline for issuing a final due process hearing decision, as described under the heading, ***Hearing Decisions***, begins at the expiration of the 30 calendar day resolution period, with certain exceptions for adjustments made to the 30 calendar day resolution period, as described below.

Except where you and the school have both agreed to waive the resolution process or to use mediation, your failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

If after making reasonable efforts and documenting such efforts, the school is not able to obtain your participation in the resolution meeting, the school may, at the end of the 30 calendar day resolution period, request that a hearing officer dismiss your due process complaint.

Documentation of such efforts must include a record of the school's attempts to arrange a mutually agreed upon time and place, such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to you and any responses received; and
3. Detailed records of visits made to your home or place of employment and the results of those visits.

If the school fails to hold the resolution meeting within 15 calendar days of receiving notice of your due process complaint **or** fails to participate in the resolution meeting, you may ask a hearing officer to begin the 45 calendar day due process hearing timeline.

### ***Adjustments to the 30 Calendar Day Resolution Period***

If you and the school agree in writing to waive the resolution meeting, then the 45 calendar day timeline for the due process hearing starts the next day.

After the start of mediation or the resolution meeting and before the end of the 30 calendar day resolution period, if you and the school agree in writing that no agreement is possible, then the 45 calendar day timeline for the due process hearing starts the next day.

If you and the school agree to use the mediation process but have not yet reached agreement, at the end of the 30 calendar day resolution period the mediation process may be continued until an agreement is reached if both parties agree to the continuation in writing. However, if either you or the school withdraws from the mediation process during this continuation period, then the 45 calendar day timeline for the due process hearing starts the next day.

### *Written Settlement Agreement*

If a resolution to the dispute is reached at the resolution meeting, you and the school must enter into a legally binding agreement that is:

1. Signed by you and a representative of the school who has the authority to enter the school into an agreement; **and**
2. Enforceable in any State court of competent jurisdiction (a State court that has authority to hear this type of case) or in a district court of the United States or by the ASDOE.

### *Agreement Review Period*

If you and the school enter into an agreement as a result of a resolution meeting, either party (you or the school) may void the agreement within 3 business days of the time that both you and the school the agreement.

## Impartial Due Process Hearing

Whenever a due process complaint is filed, you or the school involved in the dispute must have an opportunity for an impartial due process hearing, as described in the ***Due Process Complaint*** and ***Resolution Process*** sections.

### *Impartial Hearing Officer*

At a minimum, a hearing officer:

1. Must not be an employee of the ASDOE or the school that is involved in the education or care of the child. However, a person is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer;
2. Must not have a personal or professional interest that conflicts with the hearing officer's objectivity in the hearing;
3. Must be knowledgeable and understand the provisions of IDEA, Federal and American Samoa regulations pertaining to IDEA, and legal interpretations of IDEA by Federal and State courts; **and**
4. Must have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

ASDOE must keep a list of those persons who serve as hearing officers that includes a statement of the qualifications of each hearing officer.

### *Subject Matter of Due Process Hearing*

The party (you or the school) that requests the due process hearing may not raise issues at the due process hearing that were not addressed in the due process complaint, unless the other party agrees.

### *Timeline for Requesting a Hearing*

You or the school must request an impartial hearing on a due process complaint within two years of the date you or the school knew or should have known about the issue addressed in the complaint.

### *Exceptions to the Timeline*

The above timeline does not apply to you if you could not file a due process complaint because:

1. The school specifically misrepresented that it had resolved the problem or issue that you are raising in your complaint; **or**
2. The school withheld information from you that it was required to provide to you under Part B of IDEA.

### *Hearing Rights*

You have the right to represent yourself at a due process hearing. In addition, any party in a due process hearing (including a hearing relating to disciplinary procedures) has the right to:

1. Be accompanied and advised by an attorney and/or persons with special knowledge or training regarding the problems of children with disabilities;
2. Be represented at the due process hearing by an attorney or non-attorney;
3. Present evidence and confront, cross-examine, and require the attendance of witnesses;
4. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
5. Obtain a written, or, at your request, electronic, word-for-word record of the hearing; **and**
6. Obtain written, or, at your request, electronic findings of fact and decisions.

### **Additional Disclosure of Information**

At least five business days prior to a due process hearing, you and the school must disclose to each other all evaluations completed by that date and recommendations based on those evaluations that you or the school intend to use at the hearing.

A hearing officer may prevent any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

### **Parental Rights at Hearings**

You must be given the right to:

1. Have your child present at the hearing;
2. Open the hearing to the public; **and**
3. Have the record of the hearing, the findings of fact, and decisions provided to you at no cost.

### *Hearing Decisions*

A hearing officer's decision on whether your child received a free appropriate public education (FAPE) must be based on evidence and arguments that directly relate to FAPE.

In matters alleging a procedural violation (such as "an incomplete IEP Team"), a hearing officer may find that your child did not receive FAPE only if the procedural violations:

1. Interfered with your child's right to a free appropriate public education (FAPE);
2. Significantly interfered with your opportunity to participate in the decision-making process regarding the provision of a free appropriate public education (FAPE) to your child; **or**
3. Caused your child to be deprived of an educational benefit.

None of the provisions described above can be interpreted to prevent a hearing officer from ordering a school to comply with the requirements in the procedural safeguards section of the Federal regulations under Part B of IDEA (34 C.F.R. §§ 300.500 through 300.536).

### *Separate Request for a Due Process Hearing*

Nothing in the procedural safeguards section of the Federal regulations under Part B of IDEA (34 C.F.R. §§ 300.500 through 300.536) can be interpreted to prevent you from filing a separate due process complaint on an issue separate from a due process complaint already filed.

### *Findings and Decisions Provided to the Advisory Panel and General Public*

The ASDOE or the school, (whichever was responsible for your hearing) after deleting any personally identifiable information, must:

1. Provide the findings and decisions in the due process hearing or appeal to the American Samoa special education advisory panel; **and**
2. Make those findings and decisions available to the public.

### *Finality of Decision*

A decision made in a due process hearing (including a hearing relating to disciplinary procedures) is final, except that any party involved in the hearing (you or the school) may appeal the decision by bringing a civil action, as described under the heading **Civil Actions, Including the Time Period in Which to File Those Actions**.

### *Timelines and Convenience of Hearing and Reviews*

The ASDOE must ensure that not later than 45 calendar days after the expiration of the 30 calendar day period for resolution meetings **or**, as described under the sub-heading **Adjustments to the 30 calendar day resolution period**, not later than 45 calendar days after the expiration of the adjusted time period:

1. A final decision is reached in the hearing; **and**
2. A copy of the decision is mailed to each of the parties.

A hearing officer may grant specific extensions of time beyond the 45 calendar day time period described above at the request of either party (you or the school).

Each hearing must be conducted at a time and place that is reasonably convenient to you and your

child.

### *Civil Actions, Including the Time Period in Which to File Those Actions*

Any party (you or the school) who does not agree with the findings and decision in the due process hearing (including a hearing relating to disciplinary procedures) has the right to bring a civil action with respect to the matter that was the subject of the due process hearing. The action may be brought in a State court of competent jurisdiction (a State court that has authority to hear this type of case) or in a district court of the United States without regard to the amount in dispute.

### *Time Limitation*

The party (you or the school) bringing the action shall have 90 calendar days from the date of the decision of the hearing officer to file a civil action.

### *Additional Procedures*

In any civil action, the court:

1. Receives the records of the administrative proceedings;
2. Hears additional evidence at your request or at the school's request; **and**
3. Bases its decision on the preponderance of the evidence and grants the relief that the court determines to be appropriate.

Under appropriate circumstances, judicial relief may include reimbursement of private school tuition and compensatory education services.

### *Jurisdiction of District Courts*

The district courts of the United States have authority to rule on actions brought under Part B of IDEA without regard to the amount in dispute.

### *Rule of Construction*

Nothing in Part B of IDEA restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973 (Section 504), or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under Part B of IDEA, the due process procedures described above must be exhausted to the same extent as would be required if the party filed the action under Part B of IDEA. This means that you may have remedies available under other laws that overlap with those available under IDEA, but in general, to obtain relief under those other laws, you must first use the available administrative remedies under IDEA (i.e., the due process complaint; resolution process, including the resolution meeting; and impartial due process hearing procedures) before going directly into court.

### *The Child's Placement While the Due Process Complaint is Pending*

Except as provided below under the heading ***Procedures When Disciplining Children with Disabilities***, once a due process complaint is sent to the other party, during the resolution process time period, and while waiting for the decision of any impartial due process hearing or court proceeding, unless you and the ASDOE or school agree otherwise, your child must remain in his or her current educational placement.

If the due process complaint involves an application for initial admission to public school (meaning prior to when your child starts formally attending a public school), your child, with your consent, must be placed in the regular public school program until the completion of all such proceedings.

If the due process complaint involves an application for initial services under Part B of IDEA for a child who is transitioning from being served under Part C of IDEA to Part B of IDEA and who is no longer eligible for Part C services because the child has turned three, the school is not required to provide the Part C services that the child has been receiving. If the child is found eligible under Part B of IDEA and you consent for your child to receive special education and related services for the first time, then, pending the outcome of the proceedings, the school must provide those special education and related services that are not in dispute (those which you and the school both agree upon).

If a hearing officer in a due process hearing conducted by the ASDOE agrees with you that a change of placement is appropriate, that placement must be treated as your child's current educational placement where your child will remain while waiting for the decision of any impartial due process hearing or court proceeding.

### *Attorneys' Fees*

In any action or proceeding brought under Part B of IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to you, if you prevail (win).

In any action or proceeding brought under Part B of IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the prevailing school or ASDOE, to be paid by your attorney, if the attorney: filed a complaint or court case that the court finds is frivolous, unreasonable, or without foundation; **or** continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation.

In any action or proceeding brought under Part B of IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing school or ASDOE, to be paid by you or your attorney, if your request for a due process hearing or later court case was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to unnecessarily increase the cost of the action or proceeding (hearing).

### *Award of Fees*

A court awards reasonable attorneys' fees as follows:

1. Fees must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.
2. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Part B of IDEA for services performed after a written offer of settlement is made to you if:
  - a. The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing, at any time more than 10 calendar days before the proceeding begins;
  - b. The offer is not accepted within 10 calendar days; **and**



- c. The court or administrative hearing officer finds that the relief finally obtained by you is not more favorable to you than the offer of settlement.

Despite these restrictions, an award of attorneys' fees and related costs may be made to you if you prevail and you were substantially justified in rejecting the settlement offer.

Fees may not be awarded relating to any meeting of the individualized education program (IEP) Team unless the meeting is held as a result of an administrative proceeding or court action.

A resolution meeting, as described under the heading **Resolution Process**, is not considered a meeting convened as a result of an administrative hearing or court action, and also is not considered an administrative hearing or court action for purposes of these attorneys' fees provisions.

Fees also may not be awarded for a mediation as described under the heading Mediation.

The court reduces, as appropriate, the amount of the attorneys' fees awarded under Part B of IDEA, if the court finds that:

1. You, or your attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;
2. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably similar skill, reputation, and experience;
3. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
4. The attorney representing you did not provide to the school the appropriate information in the due process request notice as described under the heading **Due Process Complaint**.

However, the court may not reduce fees if the court finds that the State or school unreasonably delayed the final resolution of the action or proceeding or there was a violation under the procedural safeguards provisions of Part B of IDEA.

## Procedures When Disciplining Children with Disabilities

### Authority of School Personnel

#### *Case-by-Case Determination*

School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change of placement, made in accordance with the following requirements related to discipline, is appropriate for a child with a disability who violates a school code of student conduct.

To the extent that they also take such action for children without disabilities, school personnel may, for not more than **10 school days** in a row, remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension. School personnel may also impose additional removals of the child of not more than **10 school days** in a row in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of

placement (see the heading ***Change of Placement Because of Disciplinary Removals*** for the definition).

Once a child with a disability has been removed from his or her current placement for a total of **10 school days** in the same school year, the school must, during any subsequent days of removal in that school year, provide services to the extent required below under the sub-heading ***Services***.

#### ***Additional Authority***

If the behavior that violated the student code of conduct was not a manifestation of the child's disability (see the subheading ***Manifestation Determination***) and the disciplinary change of placement would exceed **10 school days** in a row, school personnel may apply the disciplinary procedures to that child with a disability in the same manner and for the same duration as it would to children without disabilities, except that the school must provide services to that child as described below under ***Services***. The child's IEP Team determines the interim alternative educational setting for such services.

#### **Services**

The school provides services to both a child with a disability and a child without a disability who has been removed from his or her current placement for **10 school days or less** in that school year. These services may be provided in an interim alternative educational setting.

A child with a disability who is removed from the child's current placement for **more than 10 school days** and the behavior is not a manifestation of the child's disability (see subheading, ***Manifestation Determination***) or who is removed under special circumstances (see the subheading, ***Special Circumstances***) must:

1. Continue to receive educational services (have available a free appropriate public education), so as to enable the child to continue to participate in the general education curriculum, although in another setting (that may be an interim alternative educational setting), and to progress toward meeting the goals set out in the child's IEP; **and**
2. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, which are designed to address the behavior violation so that it does not happen again.

After a child with a disability has been removed from his or her current placement for **10 school days** in that same school year, and **if** the current removal is for **10 school days** in a row or less, **and** if the removal is not a change of placement (see definition below), **then** school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

If the removal is a change of placement (see the heading, ***Change of Placement Because of Disciplinary Removals***), the child's IEP Team determines the appropriate services to enable the child to continue to participate in the general education curriculum, although in another setting (that may be an interim alternative educational setting), and to progress toward meeting the goals set out in the child's IEP.

#### **Manifestation Determination**

Within **10 school days** of any decision to change the placement of a child with a disability because of a violation of a code of student conduct (except for a removal that is for **10 school days** in a row or less and not a change of placement), the school, you, and other relevant members of the IEP Team (as determined by you and the school) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by you to determine:

1. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; **or**
2. If the conduct in question was the direct result of the school's failure to implement the child's IEP.

If the school, you, and other relevant members of the child's IEP Team determine that either of those conditions was met, the conduct must be determined to be a manifestation of the child's disability.

If the school, you, and other relevant members of the child's IEP Team determine that the conduct in question was the direct result of the school's failure to implement the IEP, the school must take immediate action to remedy those deficiencies.

### Determination that Behavior was a Manifestation of the Child's Disability

If the school, you, and other relevant members of the IEP Team determine that the conduct was a manifestation of the child's disability, the IEP Team must either:

1. Conduct a functional behavioral assessment, unless the school had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; **or**
2. If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior.

Except as described below under the sub-heading ***Special Circumstances***, the school must return your child to the placement from which your child was removed, unless you and the school agree to a change of placement as part of the modification of the behavioral intervention plan.

### Special Circumstances

Whether or not the behavior was a manifestation of your child's disability, school personnel may remove a student to an interim alternative educational setting (determined by the child's IEP Team) for not more than 45 school days, if your child:

1. Carries a weapon (see the definition below) to school or has a weapon at school, on school premises, or at a school function under the jurisdiction of the ASDOE or a school;
2. Knowingly has or uses illegal drugs (see the definition below), or sells or solicits the sale of a controlled substance, (see the definition below), while at school, on school premises, or at a school function under the jurisdiction of the ASDOE or a school; **or**
3. Has inflicted serious bodily injury (see the definition below) upon another person while at school, on school premises, or at a school function under the jurisdiction of the

ASDOE or a school.

## Definitions

*Controlled substance* means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

*Illegal drug* means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

*Serious bodily injury* refers to “serious bodily injury” under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code, meaning a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

*Weapon* refers to “dangerous weapon” under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code, meaning a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length.

## Notification

On the date it makes the decision to make a removal that is a change of placement of your child because of a violation of a code of student conduct, the school must notify you of that decision, and provide you with the procedural safeguards notice.

## Change of Placement Because of Disciplinary Removals

A removal of your child with a disability from your child’s current educational placement is a **change of placement** if:

1. The removal is for more than 10 school days in a row; **or**
2. Your child has been subjected to a series of removals that constitute a pattern because:
  - a. The series of removals total more than 10 school days in a school year;
  - b. Your child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals; and
  - c. Of such additional factors as the length of each removal, the total amount of time your child has been removed, and the proximity of the removals to one another.

Whether a pattern of removals constitutes a change of placement is determined on a case-by-case basis by the school and, if challenged, is subject to review through due process and judicial proceedings.

## Determination of Setting

The individualized education program (IEP) Team determines the interim alternative educational setting for removals that are **changes of placement**, and removals under the subheadings **Additional Authority** and **Special Circumstances**.

## Appeal

You may file a due process complaint (see the heading **Due Process Complaint Procedures**) to request a due process hearing if you disagree with:

1. Any decision regarding placement made under these discipline provisions; **or**
2. The manifestation determination described above.

The school may file a due process complaint (see above) to request a due process hearing if it believes that maintaining the current placement of your child is substantially likely to result in injury to your child or to others.

### *Authority of Hearing Officer*

A hearing officer that meets the requirements described under the subheading **Impartial Hearing Officer** must conduct the due process hearing and make a decision. The hearing officer may:

1. Return your child with a disability to the placement from which your child was removed if the hearing officer determines that the removal was a violation of the requirements described under the heading **Authority of School Personnel**, or that your child's behavior was a manifestation of your child's disability; **or**
2. Order a change of placement of your child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of your child is substantially likely to result in injury to your child or to others.

These hearing procedures may be repeated, if the school believes that returning your child to the original placement is substantially likely to result in injury to your child or to others.

Whenever you or a school files a due process complaint to request such a hearing, a hearing must be held that meets the requirements described under the headings **Due Process Complaint Procedures, Hearings on Due Process Complaints**, except as follows:

1. The ASDOE must arrange for an expedited due process hearing, which must occur within **20** school days of the date the hearing is requested and must result in a determination within **10** school days after the hearing.
2. Unless you and the school agree in writing to waive the meeting, or agree to use mediation, a resolution meeting must occur within **seven** calendar days of receiving notice of the due process complaint. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within **15** calendar days of receipt of the due process complaint.
3. A State may establish different procedural rules for expedited due process hearings than it has established for other due process hearings, but except for the timelines, those rules must be consistent with the rules in this document regarding due process hearings.

You or the school may appeal the decision in an expedited due process hearing in the same way as for decisions in other due process hearings (see the heading **Appeal**).

### ***Placement During Appeals***

When, as described above, you or the school file a due process complaint related to disciplinary matters, your child must (unless you and the ASDOE or school agree otherwise) remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time period of removal as provided for and described under the heading **Authority of School Personnel**, whichever occurs first.

### **Protections for Children Not Yet Eligible for Special Education and Related Services**

If your child has not been determined eligible for special education and related services and violates a code of student conduct, but the school had knowledge (as determined below) before the behavior that brought about the disciplinary action occurred, that your child was a child with a disability, then your child may assert any of the protections described in this notice.

#### ***Basis of Knowledge for Disciplinary Matters***

A school will be deemed to have knowledge that your child is a child with a disability if, before the behavior that brought about the disciplinary action occurred:

1. You expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or to your child's teacher that your child is in need of special education and related services;
2. You requested an evaluation related to eligibility for special education and related services under Part B of IDEA; **or**
3. Your child's teacher or other school personnel expressed specific concerns about a pattern of behavior demonstrated by your child directly to the school's director of special education or to other supervisory personnel of the school.

#### ***Exception***

A school would not be deemed to have such knowledge if:

1. You have not allowed an evaluation of your child or have refused special education services; **or**
2. Your child has been evaluated and determined to not be a child with a disability under Part B of IDEA.

#### ***Conditions that Apply if There is No Basis of Knowledge***

If prior to taking disciplinary measures against your child, a school does not have knowledge that your child is a child with a disability, as described above under the sub-headings **Basis of Knowledge for Disciplinary Matters** and **Exception**, your child may be subjected to the disciplinary measures that are applied to children without disabilities who engage in comparable behaviors.

However, if a request is made for an evaluation of your child during the time period in which your child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.

Until the evaluation is completed, your child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

If your child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the school, and information provided by you, the school must provide special education and related services in accordance with Part B of IDEA, including the disciplinary requirements described above.

## Referral to and Action by Law Enforcement and Judicial Authorities

Part B of IDEA does not:

1. Prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities; **or**
2. Prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

### *Transmittal of Records*

If a school reports a crime committed by a child with a disability, the school:

1. Must ensure that copies of the child's special education and disciplinary records are transmitted for consideration by the authorities to whom the agency reports the crime; **and**
2. May transmit copies of the child's special education and disciplinary records only to the extent permitted by the Family Educational Rights and Privacy Act (FERPA).

## Requirements for Unilateral Placement by Parents of Children in Private Schools at Public Expense

Part B of IDEA does not require a school to pay for the cost of education, including special education and related services, of your child with a disability at a private school or facility if the public school made a free appropriate public education (FAPE) available to your child and you choose to place the child in a private school or facility. However, the ASDOE must include your child in the population whose needs are addressed under the Part B provisions regarding children who have been placed by their parents in a private school under 34 C.F.R. §§ 300.131 through 300.144.

### Reimbursement for Private School Placement

If your child previously received special education and related services under the authority of a public school, and you choose to enroll your child in a private elementary school or secondary school without the consent of or referral by the public school or ASDOE, a court or a due process hearing officer may require the agency to reimburse you for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education (FAPE) available to your child in a timely manner prior to that enrollment and that the private placement is appropriate. A hearing officer or court may find your placement to be appropriate, even if the placement does not meet the ASDOE standards that apply to education provided by the ASDOE and school.

## Limitation on Reimbursement

The cost of reimbursement described in the paragraph above may be reduced or denied:

1. If: (a) At the most recent individualized education program (IEP) meeting that you attended prior to your removal of your child from the public school, you did not inform the IEP Team that you were rejecting the placement proposed by the school to provide FAPE to your child, including stating your concerns and your intent to enroll your child in a private school at public expense; or (b) At least 10 business days (including any holidays that occur on a business day) prior to your removal of your child from the public school, you did not give written notice to the school of that information;
2. If, prior to your removal of your child from the public school, the school provided prior written notice to you of its intent to evaluate your child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but you did not make the child available for the evaluation; **or**
3. Upon a court's finding that your actions were unreasonable.

However, the cost of reimbursement:

1. Must not be reduced or denied for failure to provide the notice if: (a) The school prevented you from providing the notice; (b) You had not received notice of your responsibility to provide the notice described above; or (c) Compliance with the requirements above would likely result in physical harm to your child; **and**
2. May, in the discretion of the court or a hearing officer, not be reduced or denied for your failure to provide the required notice if: (a) You are not literate or cannot write in English; or (b) Compliance with the above requirement would likely result in serious emotional harm to your child.



## Appendix: A

### **American Samoa Department of Education Notice of Confidentiality and Personally Identifiable Information**

The American Samoa Department of Education (ASDOE) must notify parents and eligible students, those 18 or older, of their rights concerning confidentiality of personally identifiable information (PII) in ASDOE schools. This document serves as the ASDOE's notice to parents.

Information about your child being a child with a disability eligible under the Individuals with Disabilities Education Act (IDEA), his or her special education and related services, and other PII is confidential and stored in a manner that ensures the security of the records under Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, and 34 C.F.R. Part 99. FERPA is a federal law that protects the privacy of a student's educational records maintained by ASDOE. Education records defined under FERPA are records that are: (1) directly related to the student; and (2) maintained by an educational agency or institution or by a party acting for the agency or institution. PII includes any information, alone or in combination, that is linked or linkable to a specific student that would allow a reasonable person who does not have personal knowledge of the relevant circumstances to identify the student with reasonable certainty.

ASDOE maintains records in paper format and electronic formats. The records may contain, but are not limited to, the following: contact information, enrollment forms, report cards, transcripts, or disciplinary letters. Everyone in schools or at ASDOE has the responsibility to maintain the confidentiality of education records.

School officials may, if they have legitimate educational interest or to fulfill their professional responsibility, have access to education records without parent consent. Generally, ASDOE must have written permission or consent parents and eligible students, those 18 or older, to disclose PII in a student's education record to a non-ASDOE employee.

#### Regarding education records, you have the right to:

1. Inspect and review all education records relating to your child without unnecessary delay and before any meeting regarding an Individualized Education Program (IEP), due process hearing, or resolution session, and in no more than 45 days after your request has been made.
2. Have your representative review the records.
3. Request that the public agency provide copies of the records if failure to provide those copies would effectively prevent you from exercising the right to inspect and review the records.
4. Have the public agency presume that you have authority to inspect and review records of your child unless the agency has been notified that you do not have authority.
5. Inspect and review only the information relating to your child if any educational record includes information on more than one child.
6. Have the public agency keep a record of parties obtaining access to your child's PII included in education records collected, maintained, or used under the IDEA (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

7. Have the public agency search for or retrieve educational records without charge.
8. Only be charged a fee for copies of records if the fee does not effectively prevent you from exercising your right to inspect and review those records.
9. Be informed of all types and locations of records being collected, maintained or used by the agency.
10. Ask for an explanation and interpretation of any item in the records.
11. Ask for an amendment of any record if the record is inaccurate, misleading, or violates the privacy or other rights of your child. All requests must be submitted to the Student Records Department at ss@doe.as.
12. Have the agency decide whether to amend the information within a reasonable time after being asked to do so.
13. Be informed of a refusal to amend the record and your right to a hearing if the agency refuses to make the requested amendment.
14. Be informed, in writing, if the agency decides in a hearing that the information is inaccurate, misleading, or violates the child's rights, and to have the record amended.
15. Be informed of your right to place a statement in the record commenting on information or setting forth your reasons for disagreeing with the agency decision if it is decided in a hearing that information need not be amended; and 16. Have your explanation maintained in the record as long as the contested record is maintained and disclosed if the contested record is disclosed.

When confidential information is released, you have the right to:

1. Restrict third-party access to your child's records by withholding consent to disclose records except (a) in certain limited circumstances described in the federal regulations implementing the FERPA, and (b) when the records are released to officials of participating agencies for purposes of meeting a requirement under the IDEA.
2. Restrict the release of your child's PII to officials of participating agencies that provide or pay for transition services to your child.
3. Be notified and receive copies before information if your child's record is destroyed.
4. Be told to whom the information has been disclosed.
5. Review and receive copies of all information sent to another agency where your child seeks or is eligible to enroll.

Summary of policies and procedures that must be followed regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information:

Each participating agency (including public schools, private schools that serve students with disabilities, and private agencies that are funded by the ASDOE) must comply with policies and procedures for student records that:

1. Guarantee access to authorized persons within 45 days of a request being made;
2. Detail and describe the student records collected and maintained;
3. Provide for inclusion in a student record any educationally relevant information provided by the parent or adult student;
4. Provide access and security of student records maintained;
5. Maintain a record of parties obtaining access to education records;
6. Require training or instruction for all persons collecting or using PII;
7. Notify parents when PII is no longer needed and destroyed;
8. Maintain the confidentiality of all student records containing the name, Social Security number, address, and telephone number information, or the address of certified participants; and

9. Provide on request a list of the types and locations of education records collected, maintained, or used by the agency.